Supreme Court, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

October Term, 1998

WILLIAM L. MILLER,

Petitioner,

v.

J.D. ABRAMS, INCORPORATED,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

SUPPLEMENTAL APPENDIX

C. DANIEL ROBERTS
Counsel of Record
C. DANIEL ROBERTS & ASSOCIATES, P.C.
707 Rio Grande, Second Floor
Austin, Texas 78701
Telephone: (512) 494-8448
Facsimile: (512) 494-8712

Counsel for Petitioner, William L. Miller

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

J.D. ABRAMS, INC.	§	
VS.	§	NO. A 96 CA 512 SS
	§	
WILLIAM L. MILLER	§	

ORDER

(Filed Sep. 5, 1997)

BE IT REMEMBERED on this the 5th day of September 1997 the Court reviewed the file in the above-styled cause and, thereafter, enters the following comments and order:

It has been said that there is nothing certain in this life but taxes and death. However, to this list it should be added: repeated appeals in bankruptcy cases that never end. This appeal is the fourth appeal to this Court in the Miller bankruptcy – none initiated by J.D. Abrams, the judgment creditor trying to collect on a judgment – and, of course, it is obvious that there will be other appeals concerning the adversary proceedings between Miller, the Balfour Beatty entities, and J.D. Abrams, pending presently in the bankruptcy court and for all practical purposes constituting the real substance of this case.

Preliminarily, a dislike for bankruptcy must be noted. This area of the law appears like the blood-sucking Dracula, as a case in bankruptcy simply won't die through the ages. In other areas of the law, cases proceed to trial, an appeal, and then the lawyers go on to other cases. In bankruptcy, the lawyers settle in self-righteous roles –

each fighting Dracula with a cross in one hand and stock certificates of ownership in the paper companies they buy from in the other.

The primary issue herein is whether the honorable bankruptcy judge erred in granting summary judgment, based on collateral estoppel, to J.D. Abrams, Inc., holding the Miller judgment debt nondischargeable under 11 U.S.C. § 523(a)(6)[1]. J.D. Abrams, Inc., additionally contends the debt was nondischargeable under 11 U.S.C. § 523(a)(4), while Miller contends the same state court judgment renders his debt dischargeable as a matter of law or, alternatively, requests a trial on the issue.

Notwithstanding the single issue of the dischargeability of a judgment debt by collateral estoppel, the parties have developed a record in both the bankruptcy court and in this court requiring the death of several large oak trees without apology to the nonuse of recyclable paper. It would appear that, if the issues in this case are so recyclable in the bankruptcy and district courts, so also should be the paper.

Now, earlier when there was a reference to "adversary proceeding," it meant real adversity. The bankruptcy court must have trained German shepherds to keep the lawyers from each other's throats. The briefs in this case must be signed only by lawyers standing 6 foot 8 inches tall weighing over 300 pounds with extensive martial arts

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[1] The Court insists on using citations to the United States Code and real cases. The parties to this appeal continue to insist on citing Bankruptcy Code sections as well as case citations such as "– BR 129 (BANKR.N.D. Ohio 1995)." These cases may exist, but certainly not in this Court's library.

training. The appellee write [sic] the appellant "attempts to obfuscate the issues . . . " and further the appellant "disingenuously fails to advise the Court . . . ," while the appellant responds that the appellee makes "egregious efforts to mislead . . . " and has already "successfully mislead the bankruptcy court."

The record is large. The briefs are extensive. The issue is simple.

The bankruptcy judge held the judgment debt non-dischargeable, as a matter of law, relying, in part, on the state court's "pleadings, record, and testimony . . . " and "especially the Court's charge, the jury's verdict, and the state district court's judgment." The statutory basis for the nondischargeability of the debt was 11 U.S.C. § 523(a)(6), which reads, "A discharge . . . does not discharge an individual debtor from any debt . . . for willful and malicious injury by the debtor to another entity or to the property of another entity."

In state court, appellee obtained a judgment in excess of $1 million against Miller, and the verdict of the jury established: (1) J.D. Abrams, Inc., failed to prove by a preponderance of the evidence that Miller violated a fiduciary duty owed to J.D. Abrams, Inc.; (2) Miller misappropriated proprietary information or made an improper use of trade secrets of J.D. Abrams, Inc. "Misappropriation" was defined as the wrongful taking and use of another's property; and, (3) J.D. Abrams, Inc., failed to prove by a preponderance of the evidence that Miller acted with malice toward J.D. Abrams, Inc., when misappropriating proprietary information or improperly using the trade secret information.

The record before the bankruptcy court was that Miller was vice president and director of J.D. Abrams, Inc., having knowledge of proprietary information and trade secrets of which he used for his own advantage to secure beneficial employment with Balfour Beatty and induce it to become a competitor with J.D. Abrams, Inc., in the highway construction business in Texas. During the time of transition of employment, the jury found Miller either misappropriated proprietary information or improperly used the trade secrets of J.D. Abrams, Inc. There is no question this was intentional conduct on behalf of Miller and, further, no question that it would result in injury and/or damage to J.D. Abrams, Inc. The failure of the jury to find Miller acted with malice – that is, as defined "ill will, spite, evil motive or flagrant disregard of the rights of others" – toward J.D. Abrams in no way negates that Miller's conduct was intentional and resulting in the damage to J.D. Abrams, Inc.

In *Vickers v. Home Indemnity Co., Inc.*, 546 F.2d 1149 (5th Cir. 1977), Justices Gee, Coleman, and Goldberg adopted the *Collier on Bankruptcy* definition for the terms "willfulness and malice" now included in 11 U.S.C. § 523(a)(6). The court held that the standard interpretation of these words were as follows:

> In order that a provable liability come within this exception the injuries must have been both willful and malicious. An injury to person or property may be a malicious injury within this provision if it was wrongful and without just cause or excuse, even in the absence of personal hatred, spite or ill will. The word "willful" means nothing more than intentionally doing an act which necessarily leads to injury. Therefore,

> a wrongful act done intentionally, which necessarily produces harm and is without just cause or excuse, may constitute a willful and malicious injury.

This holding continues as law in the Circuit. *See, Chrysler Credit Corp. v. Perry Chrysler Plymouth,* 783 F.2d 480 (5th Cir. 1986); *Matter of Garner,* 56 F.3d 677 (5th Cir. 1995); and *Matter of Greenway,* 71 F.3d 1177 (5th Cir. 1996).

These authorities have led to identical holdings in the Second Circuit in *In re Stelluti,* 94 F.3d 84 (2d Cir. 1996), wherein the Circuit Court expressly stated:

> The term "malicious" means wrongful and without just cause or excuse, even in the absence of personal hatred, spite, or ill will. *See,* 3 Lawrence P. King, et al., *Collier on Bankruptcy* ¶ 523.16[1] at 523-110 (15th ed. 1996); *see also, In re Garner,* 56 F.3d 677, 681 (5th Cir. 1995).

This same holding has been determined by [sic] in the Eleventh Circuit. *See, In re Walker,* 48 F.3d 1161 (11th Cir. 1995). In *In re Waugh,* 95 F.3d 706 (8th Cir. 1996), the Eighth Circuit established the identical standard expressly holding:

> Section 523(a)(6) of the Bankruptcy Code provides that a debt may not be discharged when the debtor has willfully and maliciously injured another entity or the property of another entity. . . . Willful is defined as " 'headstrong and knowing' conduct," while malicious is "conduct 'targeted at the creditor at least in the sense that the conduct is certain or almost certain to cause harm.' " . . .

The bankruptcy judge was correct in finding that the judgment debt was nondischargeable on behalf of Miller by collateral estoppel based on the jury's findings and the trial record before it. The bankruptcy judge was further correct in failing to find the nondischargeability of the judgment debt pursuant to 11 U.S.C. § 523(a)(4) and was correct in overruling all of the contentions with the appellant Miller with regard to his contentions on finding the judgment debt dischargeable based upon collateral estoppel. Therefore, the judgment on the issue that the judgment debt in favor of J.D. Abrams against Miller was nondischargeable pursuant to 11 U.S.C. § 523(a)(6) is AFFIRMED AND APPROVED.

Until the next appeal.

September 5, 1997
Date

/s/ Sam Sparks
UNITED STATES
DISTRICT JUDGE